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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of)	
)	
PETITION TO AMEND RULES 4.2)	
5.1, 5.4, 7.2, 7.4, 26.12 AND 27.8 OF)	Supreme Court No. R-17_____
THE ARIZONA RULES OF)	
CRIMINAL PROCEDURE)	
_____)	

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, and Chair of the Supreme Court Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies (“the Task Force”) respectfully petitions this Court to amend Rules 4.2, 5.1, 5.4, 7.2, 7.4, 26.12 and 27.8 of the Rules of Criminal Procedure. These changes are proposed to implement several of the Task Force’s [recommendations](#) dated August 12, 2016.

I. Background and Purpose of the Proposed Rule Amendments. The proposed rule changes address two distinct issues: (1) how courts handle convicted defendants who have failed to pay their monetary sanctions in a timely fashion

(hereinafter “the § 13-810 rule proposal”); and (2) procedures for finding a person to be not eligible for bail under the Arizona Constitution (hereinafter “the bail eligibility rule proposal”). The rules addressed in the § 13-810 rule proposal are set forth in Appendix A. The bail eligibility rules are set forth in Appendix B.

The two proposals have been organized into two separate appendices because the bail eligibility rule proposal will likely be impacted by the success of the Task Force’s pending legislative proposals and by this Court’s resolution of the issues in *Simpson v. Miller*, Supreme Court No. CR-16-0227-PR (argued Nov. 8, 2016). Accordingly, the Court may prefer to resolve the bail eligibility rules on a different time frame.

II. Resolving Failure to Pay Criminal Fines and Fees – the § 13-810 Rule Proposal

The proposed changes to Rules 26.12 and 27.8 in Appendix A are intended to follow through on the Task Force’s mission to recommend court rules for collecting court imposed payments and develop options for allowing citizens unable to pay the full amount of a sanction at the time of sentencing,¹ and to implement Task Force recommendations nos. 30 and 32,² promoting defendants’ voluntary

¹ Supreme Court Administrative Order No. 2016-16.

² Recommendation 30. *Prior to or in lieu of issuing a warrant to bring a person to court for failure to pay, courts should employ proactive practices that promote voluntary compliance and appearance such as: notifying defendants of non-payment, consequences and resolution options; scheduling of an Order to Show Cause hearing, or sentence review.*
Recommendation 32. *Promote the use of restitution courts, status conferences, and probation*

appearance in court, and non-jail enforcement alternatives (Task Force [report](#) at pp. 20 and 23-24).

The proposed amendments to Rule 26.12(c)(4) add language to encourage courts to promote voluntary compliance and appearance by defendants before taking more formal steps, in keeping with Task Force Recommendation No. 30. This subsection also contains new language that adds a preference for issuing a summons over a warrant when serving a defendant with an Order to Show Cause for failure to pay monetary obligations, pursuant to A.R.S. § 13-810. If the court finds the defendant to be in contempt for willful failure to pay, the proposal adds the requirement that the court give the defendant time to purge the contempt prior to being incarcerated. The Task Force heard from a superior court judge who employs this practice that the vast majority of defendants do find a way to make the required payment when facing incarceration.

The proposal also adds a new subsection 26.12(c)(5) requiring the court find that no reasonable measures other than incarceration will meet the state's interest before incarcerating a defendant for failure to pay. This language was inspired by the U.S. Supreme Court's decision in *Bearden v. Georgia*, 461 U.S. 660, 672, 103 S. Ct. 2064, 2073, 76 L. Ed. 2d 221 (1983), in which the court overturned a decision

review hearings that ensure due process and consider the wishes of the victim. Provide judicial training on the appropriate use of Orders to Show Cause in lieu of warrants and appointment of counsel at hearings involving a defendant's loss of liberty.

to revoke the probation of an indigent defendant and send him to jail for failure to pay a fine without first inquiring into why he failed to pay. The opinion states:

Only if the sentencing court determines that alternatives to imprisonment are not adequate in a particular situation to meet the State's interest in punishment and deterrence may the State imprison a probationer who has made sufficient bona fide efforts to pay.

Under the statutory scheme in A.R.S. § 13-810, the court has discretion to incarcerate *only* those defendants who willfully fail or refuse to pay, which is an important distinction from the fact scenario presented by *Bearden*. Nevertheless, the Task Force felt that incarceration should be a last resort even in the case of a willful contemnor, and that a statewide standard to that effect should be established by rule.

The proposed revision to Rule 27.8(b)(4) is intended to promote candor by the defendant at the § 13-810 contempt proceeding, by ensuring that statements made at the hearing by a defendant on active probation cannot be used in a subsequent probation revocation hearing, if the defendant appears without an attorney. Additionally, the Task Force agreed that, even though a proceeding under A.R.S. § 13-810 is considered a civil contempt proceeding, the court needs to ensure any active probationer hauled into court for one of these hearings is afforded due process as specified by Rule 27, including representation by counsel, if the court wants to revoke a defendant's probation for willful failure to pay a fine.

III. The Bail Eligibility Rule Proposal

The proposed changes to Rules 4.2, 5.1, 5.4, 7.2 and 7.4 in Appendix B are designed to implement the Task Force's pretrial detention recommendations.

Principle 9 calls for reform in bail determination for dangerous felony defendants as follows:

Principle Nine: Only defendants who present a high risk to the community or individuals who repeatedly fail to appear in court should be held in custody.

Although most defendants pose risks that are manageable at reasonable levels outside of the jail, some defendants pose such risks that no bond or conditions of release can reasonably assure public safety or court appearance. There is no question that people should not remain in jail solely because they cannot afford bail. But there are those for whom pretrial detention is appropriate: those whose release would jeopardize the public and those with a very high likelihood of not appearing for future court hearings. Arizona statutes list several circumstances in which bail may or must be denied. *See A.R.S. § 13-3961 (Offenses not bailable; purpose; preconviction; exceptions).*

In Arizona, a court must detain a defendant after a hearing when there is "clear and convincing evidence that the person charged poses a substantial danger to another person or the community or engaged in conduct constituting a violent offense" if no condition or combination of conditions of release will reasonably assure the safety of the other person or the community. *See A.R.S. § 13-3961 (Offenses not bailable; purpose; preconviction; exceptions).* Currently, the referenced hearing may be initiated only by the state, and in many initial appearance courts throughout the state, a prosecutor is not present. Therefore, the court should be able to order this hearing based on the circumstances of the offense, the information contained in a pretrial risk assessment, and other information available to the court at the time a bail determination is being made. Revisions to A.R.S. § 13-3961(D) and (E) are recommended to allow for the hearing to be set by the court and not only on the state's motion.

The proposed amendments to Rule 4.2 and 7.2 of the Arizona Rules of Criminal Procedure track Article 2, Section 22(A)(3) of the Arizona Constitution and the substantive provisions of A.R.S. § 13-3961. These amendments contain procedural differences from the current statutory language in that determination of whether the defendant is not bailable is required to be initiated by the magistrate rather than solely by the prosecutor, and a bail hearing is required to be set within seven days rather than 24 hours after the Initial Appearance. The Arizona Judicial Council approved the introduction of legislation to conform the statutes to these proposals. The proposed amendments also provide factors for the judge to consider in determining whether a defendant is dangerous. These changes are designed to replace the current practice of setting high bond amounts for defendants determined dangerous with a requirement that the court determine whether these offenders are not bailable. Because imposition of high bond amounts still allows for those dangerous defendant with access to money to be released, the Task Force report indicates this change will result in more effective detention of dangerous offenders. This change is not expected to result in a significant increase in defendants detained.

In formulating its proposal, the Task Force considered the Preventive Detention section (pp 24-29) of a recent report entitled “[Moving Beyond Money: A Primer on Bail Reform](#)” from the Harvard Law School Criminal Justice Policy Program, particularly the discussion of the importance of limited points of entry to

preventive pretrial detention and the regard expressed by the U.S. Supreme Court in *U.S. v. Salerno*, 481 U.S. 739, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987), for the federal Bail Reform Act of 1984 (18 U.S.C. § 3142) limitation of pretrial detention to the most serious federal offenses. These offenses are described in subsection 3142(f) of the Act.³

However, temporary detention at the federal equivalent of the Initial Appearance may be imposed under subsection (d) of the Act, “If the judicial officer determines that . . . (2) such person may flee or pose a danger to any other person or the community,” without limitation as to the offense charged. Additionally, a “crime of violence” is defined at 18 U.S.C.A. § 16 as:

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a

³ **(f) Detention hearing.**--The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community--

(1) upon motion of the attorney for the Government, in a case that involves--

- (A) a crime of violence, a violation of [section 1591](#) (*Sex trafficking of children or by force, fraud, or coercion*), or an offense listed in [section 2332b\(g\)\(5\)\(B\)](#) (*Acts of terrorism transcending national boundaries*) for which a maximum term of imprisonment of 10 years or more is prescribed;
- (B) an offense for which the maximum sentence is life imprisonment or death;
- (C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act ([21 U.S.C. 801 et seq.](#)), the Controlled Substances Import and Export Act ([21 U.S.C. 951 et seq.](#)), or chapter 705 of title 46;
- (D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or
- (E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in [section 921](#)), or any other dangerous weapon, or involves a failure to register (*as a sex offender*) under [section 2250 of title 18, United States Code](#);... (Italics added).

substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

While the Bail Reform Act limits the use of pretrial detention to particular offenses, it does not limit pretrial detention to offenses ordinarily considered the most serious, violent, or dangerous offenses. Similarly, the offenses described in 18 U.S.C. § 3142(f)(1)(C) and (D)⁴ do not necessarily include any violence as an element of the offense. This may be explained by the federal law’s authorization of pretrial detention to prevent flight risk in addition to danger to persons and the community.⁵

By contrast, the Arizona Constitution (Article 2, Section 22), A.R.S. § 13-3961, and the proposed rules focus on the dangerousness of the defendant and permit denial of bail solely for protection of persons and the community. Nevertheless, the offense charged is relevant to the decision as to whether a defendant is not bailable under Arizona law, because the defendant “poses a substantial danger to any other person or the community.” In considering this factor, Arizona judges can look to the definition of “dangerous offense” in A.R.S. § 13-105:

13. “Dangerous offense” means an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person.

39. “Serious physical injury” includes physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement,

⁴ See footnote 3.

⁵ 18 U.S.C. § 3142(f)(2)(A).

serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

Arizona judges could also look to A.R.S. § 13-706, which identifies specific offenses considered violent and serious. This requirement of Arizona law - that only defendants who pose a substantial danger be detained pretrial appears to impose pretrial detention “only on individuals who have been arrested for a specific category of extremely serious offenses⁶” more narrowly and effectively than the federal law.

Due to the valid concerns about the need to limit points of entry to pretrial detention expressed in the Harvard report, the proposed rules include factors to be considered in determining a defendant nonbailable due to dangerousness. The language provided in the proposed subsection 7.2(b)(3) is modeled after 18 U.S.C. 3142(g) of the Bail Reform Act, and refers judges to the definition of “dangerous offense” in A.R.S. § 13-105. The Task Force workgroup that drafted the bail eligibility rules debated whether Rule 7.2 should refer to A.R.S. § 13-706 or § 13-105, and ultimately decided on § 13-105. The option of not including any statutory reference was also considered. The lists of offenses in § 13-706 provided for sentencing of repetitive offenders were recognized as overinclusive and underinclusive for use to identify dangerous defendants who are not bailable. The definition of “dangerous offense” in § 13-105 was considered descriptive of the kind of alleged conduct that judges consider currently when they set high bond intended

⁶ *U.S. v. Salerno, supra*, 481 U.S. 739, 750.

to prevent the release of the defendant on bail. The research performed for the Task Force has not revealed the laws or rules of any other state that provide a better model for identifying felony defendants who pose a danger to the community.

Finally, amendments to Rule 5.1, 5.4, 7.2 and 7.4 are proposed to address a procedural redundancy with the preliminary hearing provided under Rule 5.1 when a bail eligibility hearing is held under proposed Rule 7.2(b)(4). If a bail eligibility hearing is held within seven days at which the state has the burden of showing proof evident or presumption great that the defendant committed the offense, it is unnecessary for the state to prove probable cause that the defendant committed the offense at a separate preliminary hearing under Rule 5. Instead, a finding of proof evident or presumption great or of probable cause will be made at the bail eligibility hearing.

The *Simpson*⁷ case requires the bail hearing to be a full evidentiary hearing. Consequently, this hearing should be procedurally comparable to the preliminary hearing. In order to make this clear, procedural provisions drawn from Rule 5 are incorporated into Rule 7.4. The last sentence of Rule 7.4(b) is narrowed to permit only the state to seek reexamination of eligibility and conditions of release without new material facts where the defendant is determined bailable at the initial appearance. If the defendant is determined not bailable at the initial appearance the

⁷ *Simpson v. Miller*, 2016 WL 3264151 (Az Ct. App. Div. 1, June 14, 2016).

bail eligibility (*Simpson*) hearing will be held under Rule 7.2 (b)(4) without the need for a defense motion. Once a bail eligibility hearing is held either party may move for reexamination of bail eligibility or conditions of release based upon new material facts.

This petition is the best effort of the Task Force composed of criminal justice system professionals from multiple perspectives (See Appendix C) to address the need for preventive detention by denial of bail rather than by setting a high bond as explained above. This petition is the product of their input and received the support of the large majority but not all participants.

Wherefore, petitioner respectfully requests that the Court amend the Rules of Criminal Procedure as proposed in the Appendices attached to this Petition.

RESPECTFULLY SUBMITTED this 9th day of January, 2017.

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APPENDIX A

(language to be removed is shown in ~~striketrough~~, new language is underlined)

RULES OF CRIMINAL PROCEDURE

Rule 26.12. Compliance with sentence

a. and b. [no changes]

c. Action upon Failure to Pay a Fine, Restitution, Other Monetary Obligation, or to Comply with Court Orders.

(1) *For Defendants Not on Supervised Probation.* If a defendant fails to pay a fine, restitution, or other monetary obligation, or is known by the court to have failed to comply with a term or condition of sentence within the prescribed time, the court shall, within 5 days, notify the prosecutor.

(2) *For Defendants on Supervised Probation.* If a defendant on supervised probation fails to pay a fine, restitution, or other monetary obligation, or is known by the court to have failed to comply with any other term or condition of probation within the prescribed time, the court shall give notice of such failure to the defendant's probation officer within the time limits set under sections (c)(1) and (3).

(3) *Time limits--Restitution and Non-Monetary Obligations.* If the payment or performance of an obligation does not involve the court, delinquency times shall run from the date on which the court or the probation officer becomes aware of failure to pay or comply.

(4) *Court Action upon Failure of Defendant to Pay Fine, Restitution, or Other Monetary Obligation or to Comply with Court Orders.* Upon the defendant's failure to pay a fine, restitution, or other monetary obligation, or failure to comply with court orders, and failure to respond to a court notice of the consequences and resolution options, the court may require the defendant to show cause why said defendant should not be held in contempt of court ~~and may issue a summons or warrant for the defendant's arrest.~~ The court must issue a summons unless there is reason to believe a warrant is required to secure the defendant's appearance. A prosecutor who requests a warrant or a judge who orders a warrant shall state the reasons for the issuance of the warrant rather than a summons.

(5) *Purge Review Hearing and Incarceration.* If the court finds the defendant in contempt for failure to pay a monetary obligation, the court may not order the defendant incarcerated unless no reasonable measures other than incarceration are adequate to meet the state's interests. Before taking the defendant into custody, the court must first set a purge review hearing and give the defendant a reasonable period of time prior to the hearing to pay the obligation in full or make other payment arrangements.

Rule 27.8. Revocation of probation

a. [no changes]

b. Violation Hearing.

(1) A hearing to determine whether a probationer has violated a written condition or regulation of probation shall be held before the court no less than 7 and no more than 20 days after the revocation arraignment, unless the court, upon the request of the probationer made in writing or in open court on the record, sets the hearing for another date.

(2) The probationer shall be present at the hearing.

(3) A violation must be established by a preponderance of the evidence. Each party may present evidence and shall have the right to cross examine witnesses who testify. The court may receive any reliable evidence not legally privileged, including hearsay.

(4) An admission made by the probationer at any hearing in the same cause of action relating to the probationer's failure to pay a monetary obligation imposed in the case is inadmissible in the probation violation hearing, unless the probationer was represented by counsel at the hearing on defendant's failure to pay.

~~(4)~~(5) If the court finds that a violation of a condition or regulation of probation occurred, it shall make specific findings of the facts which establish the violation and shall set a disposition hearing.

c. through f. [no changes]

APPENDIX B

(language to be removed is shown in ~~striketrough~~, new language is underlined)

RULES OF CRIMINAL PROCEDURE

Rule 4.2. Initial appearance

a. In General. At the suspect's initial appearance, the magistrate ~~shall~~ must:

- (1) Ascertain the suspect's true name and address and, if necessary, amend the formal charges to reflect it, and instruct the suspect to notify the court promptly of any change of address;
- (2) Inform the defendant of the charges;
- (3) Inform the defendant of the right to counsel and the right to remain silent;
- (4) Determine whether probable cause exists for the purpose of release from custody. If no probable cause is found, the defendant shall immediately be released from custody;
- (5) Appoint counsel if the suspect is eligible for and requests appointed counsel under Rule 6;
- (6) Consider comments offered by the victim concerning the conditions of release. The magistrate shall permit the victim to comment orally or in writing on the issue of the suspect's release;
- (7) ~~Determine the conditions of release in accordance with Rule 7.2 including whether the defendant is non-bailable pursuant to A.R.S. Const. Art. 2 § 22 and A.R.S. 13-3964~~ whether probable cause exists to believe:
 - (A) The defendant committed an offense for which release on bail is prohibited by Ariz. Const. Art. 2, Sec. 22(A)(1) or (2);
 - (B) The defendant committed a felony for which release on bail is prohibited by Ariz. Const. Art. 2, Sec. 22(A)(3) because the defendant poses a substantial danger and no conditions of release will reasonably assure the safety of another person or the community; or
 - (C) The defendant must be released on bail pursuant to Rule 7.2(a).
- (8) Schedule a bail eligibility hearing in superior court as required by Rule 7.2(b)(4) for a defendant held not bailable as required by (a)(7)(A) or (B).

~~(8)~~(9) For summoned defendants charged with a felony offense, a violation of Title 13, Chapter 14, or Title 28, Chapter 4¹, or a domestic violence offense as defined in § 13-3601, if the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number, the court shall order that within twenty calendar days, the defendant be ten-print fingerprinted at a designated time and place by the appropriate law enforcement agency; and

~~(9)~~(10) For an in-custody defendant who was arrested for an offense listed in A.R.S. Section 13-610(O)(3), if the court has not received proof of compliance with A.R.S. Section 13-610(K), ~~the court shall order the arresting agency to secure a sample of buccal cells or other bodily substances for DNA testing.~~

b. and c. [no changes]

Rule 5.1. Right to preliminary hearing; waiver; postponement

a. Right to Preliminary Hearing. When a complaint is filed charging the defendant with the commission of a felony, a preliminary hearing shall commence before a magistrate not later than 10 days following defendant's initial appearance if the defendant is in custody and not later than 20 days following defendant's initial appearance if the defendant is not in custody unless:

- (1) The complaint has been dismissed;
- (2) The hearing is waived; ~~or~~
- (3) The defendant has been transferred from the juvenile court for criminal prosecution on specified charges;
- (4) The defendant received a bail eligibility hearing pursuant to Rule 7.2(b); or
- ~~(4)~~(5) The magistrate orders the hearing postponed as provided in Section (c).

b. through d. [no changes]

Rule 5.4. Determination of probable cause

a. Holding a Defendant to Answer. If it appears from the evidence that there is probable cause to believe that an offense has been committed and that the defendant

committed it, the magistrate shall enter a written order holding the defendant to answer before the Superior Court and, upon request, reconsider the conditions of release. A probable cause finding made at a bail eligibility hearing held pursuant to Rule 7.2(b)(4) satisfies the requirements of this rule.

b. through d. [no changes]

Rule 7.2. Right to release

a. [no change]

b. Before Conviction; Persons Charged With an Offense Not Bailable as a Matter of Right.

(1) *Specific Felonies Not Bailable.* A person shall ~~must~~ not be released on bail if the court finds the proof is evident or the presumption great that the person is not bailable pursuant to law committed an offense described in Ariz. Const. Art. 2, Sec. 22(A)(1) or (2).

(2) *Other Felonies Not Bailable.* A person charged with any other felony offense must not be released on bail if the court finds all of the following:

(A) Proof is evident or the presumption great that the person committed a felony offense with which the person is charged;

(B) Clear and convincing evidence that the person poses a substantial danger to another person or the community; and

(C) Clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any person or the community.

(3) *Not Bailable Considerations.* In making the determinations required by subsections (2)(B) and (2)(C), the court must consider:

(A) the nature and circumstances of the offense charged, including whether the offense is a “dangerous offense” as defined in A.R.S. § 13-105;

(B) the weight of the evidence against the person;

(C) the history and characteristics of the person, including the person’s character, physical and mental condition, past conduct, history relating to drug or alcohol abuse, and criminal history;

(D) the nature and seriousness of the danger to any person or the community that

- would be posed by releasing the person on bail, including any threat to a victim or other participants in the judicial process;
- (E) the recommendation of the pretrial services program based upon an appropriate risk assessment instrument;
- (F) any victim statement about the offense and release conditions; and
- (G) any other factor relevant to the determinations required by subsections (2)(B) and (2)(C).
- (4) *Bail Eligibility Hearing.* For a person held not bailable pursuant to (b)(2), the superior court must hold a hearing to determine whether the person is not bailable under subsection (b)(1) or (b)(2). The person may waive this hearing. The hearing must be held as soon as practicable but not later than seven days after the initial appearance unless the person detained moves for a continuance. If the court does not find the proof evident or the presumption great under (b)(2)(A), the court must determine probable cause on each charge as provided in Rule 5.4(a) unless the defendant has been indicted for the offenses charged. The court's findings must be made on the record.

c. and d. [no changes]

Rule 7.4. Procedure

a. Initial Decision. At the initial appearance before a magistrate, a determination of the conditions of release shall be made. The court shall issue an order containing the conditions of release and shall inform the accused of the conditions, the possible consequences of their violation, and that a warrant for his or her arrest may be issued immediately upon report of a violation.

b. Bail Eligibility Hearing. All parties shall have the right to cross-examine the witnesses testifying personally against them, and to review their previous written statements prior to such cross-examination. At the bail eligibility hearing, only evidence material to whether probable cause exists to hold the defendant for trial on each charge and whether and under what conditions to release the defendant on bail is admissible. Rules or objections calling for the exclusion of evidence on the ground that it was obtained unlawfully are inapplicable. Determinations under this rule may be based on

evidence not admissible under the rules of evidence, including hearsay in whole or in part in the following forms:

(1) Written reports of expert witnesses;

(2) Documentary evidence without foundation, provided there is a substantial basis for believing such foundation will be available at trial and the document is otherwise admissible;

(3) The testimony of a witness concerning the declarations of another or others where such evidence is cumulative or there is reasonable ground to believe that the declarants will be personally available for trial.

~~**c. Evidence.** Release determinations under this rule may be based on evidence not admissible under the rules of evidence.~~

c. Amendment of complaint. The complaint may be amended at any time to conform to the evidence, but the defendant must not be held to answer for a crime different from that charged in the original complaint.

d. Discharge of the defendant. Unless the defendant has been indicted for the offenses charged, if it appears that that the proof is not evident or the presumption is not great under 7.2(b)(2)(A) or there is not substantial evidence of probable cause to believe that an offense has been committed and that the defendant committed it, the court shall dismiss the complaint and discharge the defendant.

~~**be. Subsequent review of conditions.**~~ Any party may move for reexamination of bail eligibility or the conditions of release whenever the case is transferred to a different court or the motion alleges the existence of material facts not previously presented to the court. The court may, on motion of any party, or on its own initiative, modify the conditions of release after giving the parties an opportunity to respond to the proposed modification. The motion shall comply with the requirements of this rule, Rule 35 and Rule 39. ~~If the a-motion by the state involves whether the a person previously held~~ bailable at the initial appearance, ~~shall be held without bail,~~ the motion need not allege new material facts and a hearing on the motion shall be held on the record as soon as practicable but not later than seven days after filing of the motion.

~~**df. Review of bond.**~~ The court before which a misdemeanor is pending shall, no more than 10 days after arraignment, review the case file concerning the conditions of release

of any defendant held in custody on bond for the purpose of determining the propriety of amending the conditions of release.